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*Attorney for Plaintiffs*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

Joston Theney ,

Plaintiff,

v.

Christopher Otiko,

Defendant,

Coast to Coast Podiatry, Inc.  
dba as Blood Red Films,

Defendant,

and

ImageWorks Entertainment International  
Inc,

Defendant

Case No.: [Case No.]

**JURY TRIAL DEMANDED**

**COMPLAINT FOR COPYRIGHT INFRINGEMENT  
AND DECLARATORY JUDGMENT RELIEF**

COMES NOW the Plaintiff Joston Theney (“Theney”), and for his Complaint against the above-named Defendants, states and alleges the following:

**JURISDICTION**

1. This Court has subject matter jurisdiction over Plaintiff’s claim for copyright infringement and for declaratory judgment relief of ownership of the copyright to the work AXEMAN II: OVERKILL (“the Work”) pursuant to 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

**VENUE**

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and § 1400(a) because Defendants Christopher Otiko (“Otiko”), Coast to Coast Podiatry, Inc. dba Blood Red Films (“BRF”), as well as ImageWorks Entertainment International, Inc. (“ImageWorks”) maintain their principal places of business in this District.

**THE PARTIES**

3. Plaintiff Joston Theney is a resident of California with a home address of , Los Angeles, CA 90027.

4. Defendant Otiko, on information and belief, has his business office at , Marina Del Ray, CA 90292, and his home residence at , West Hills CA 91307-3331.

5. Defendant Coast to Coast Podiatry, Inc. dba Blood Red Films is located at , Marina del Ray, California, 09292, per the Fictitious Business Name Statement filed by Otiko on August 22, 2012 with the County of Los Angeles. The current address of Coast to Coast Podiatry, Inc., on information and belief, is Reseda, CA 91335.

6. Defendant ImageWorks Entertainment International Inc. is a California corporation that is, on information and belief, in good standing, with its principle place of business located at , Woodland Hills, CA 91367.

7. Based upon each of the above, venue is proper in the jurisdiction of this Court.

**STATEMENT OF FACTS**

8. Plaintiff Joston Theney is a screenwriter, director and producer of motion pictures.

9. Mr. Theney wrote, directed, edited and produced the motion picture Axeman at Cutter's Creek, and obtained Copyright Registration PAu 3-690-388 for it on June 26, 2013. There is no dispute that Mr. Theney owns the copyright to the first Axeman movie.

10. Thereafter, in 2014, Mr. Theney wrote a derivative screenplay that is now at issue in this suit, i.e., **Axeman II: Overkill** ("the Work").

11. On April 20, 2015, Mr. Theney applied for and obtained Copyright Registration Txu 1-963-0522 for his screenplay.

12. Mr. Theney solely directed, edited and produced the motion picture **Axeman II: Overkill**.

13. Defendant Otiko is a podiatrist who desires to be in the movie business.

14. Defendant Otiko invested money in the original Axeman motion picture.

15. As condition of his investment, Defendant Otiko requested that he be listed in the credits as a writer and producer of the original Axeman film, to which Mr. Theney agreed, even though Otiko was neither a writer nor producer of the Work.

16. Defendant Otiko later invested approximately \$52,000 dollars in the derivative film, **Axeman II: Overkill**.

17. As a condition of his investment in the Work, Otiko requested that he be listed in the credits and promotional materials of the Work as a writer and producer of the Work at issue, even though Otiko was neither a writer nor producer of the Work.

1 18. Again, Mr. Theney agreed to this condition.

2 19. Defendant Otiko did not actually write any part of the Work at issue.

3 20. Defendant Otiko did not direct any part of the Work at issue.

4 21. There is no “work for hire” agreement signed by Mr. Theney that would  
5 legally transfer his copyright to Otiko or BRF.  
6

7 22. There is no signed agreement wherein Mr. Theney transferred his copyright  
8 to the Work to Otiko or BRF.  
9

10 23. Mr. Theney and Defendant Otiko entered into a signed “Co-Production  
11 Agreement” with an electronic metadata date of January 28, 2016 (attached hereto as  
12 Exhibit A).  
13

14 24. The “Co-Production Agreement” states in full that:

15  
16 This agreement was drafted to keep things transparent and easy to understand.

- 17 1. Joston Theney is the sole author and copyright holder for the literary work  
18 titled AXEMAN II: OVERKILL. He owns all right title and interest in and to the  
19 screenplay, characters and subsequent stories derived from the original  
20 work.
- 21 2. As the copyright holder, Joston Theney and his production company  
22 #SinningWorks owns all right title and interest in and to the feature film  
23 based on the AXEMAN II: OVERKILL literary work.
- 24 3. Christopher Otiko and his co-production company Coast to Coast dba Blood  
25 Red Films, are investors in the feature film based on the AXEMAN II:  
26 OVERKILL literary work.
- 27 4. Christopher Otiko and his co-production company Coast to Coast dba Blood  
28 Red Films are to receive credits in “name-only,” meaning he had no actual  
duties or responsibilities in said role but received the titles for his  
investment. Those credits were: Executive Producer and Writer.
5. For Christopher Otiko’s and his company Coast to Coast dba Blood Red Films’  
total investment of \$51,641.25 in the feature film based on the AXEMAN II:  
OVERKILL literary work, they will receive a 50% share of said film’s net  
revenue.
6. Joston Theney and his production company #SinningWorks has assigned  
Christopher Otiko and his co-production company Coast to Coast dba Blood

Red Films the right to negotiate and sign Sales Agency Representation contracts for any sales agent and contract that both parties agree to.

7. Joston Theney and his production company #SinningWorks retains the sole right to negotiate, sign and/or refuse any distribution offer received. No agreement shall supersede this unless a modified Co-Production Agreement is signed by both parties.

Signatures below constitute both parties' understanding and acceptance of the terms listed above.

Signature of Joston Theney  
#SinningWorks

Signature of Christopher Otiko  
Coast to Coast dba Blood Red Films

25. Defendant Otiko and Mr. Theney worked together in an effort to market **Axeman II: Overkill** and release it to the public so that Defendant Otiko could recoup his investment, and then split the remaining profits 50/50.

26. Mr. Theney repeatedly told Defendant Otiko that he did not want to enter into a "distribution" type contract with any third party, but rather, wanted to control how much was received for licensing the film to any third party, therefore Mr. Theney gave Defendants BRF and Otiko the right to "negotiate and sign [any] Sales Agency Representation contracts for any sales agent and contract that both" Defendant Otiko and Mr. Theney agreed to.

27. Under a "distribution" contract, Mr. Theney would have no control over the amount of money his movie was licensed for.

1           28. Mr. Theney located Defendant ImageWorks Entertainment, International,  
2 Inc. (“ImageWorks”), and Mr. Theney and Mr. Otiko then began negotiations for sales  
3 agency agreement.  
4

5           29. Mr. Theney made clear to ImageWorks that he was not going to agree to a  
6 distribution agreement, but desired a sales agency agreement.  
7

8           30. ImageWorks represented that it was a sales agent and that the agreement  
9 would be a sales agency agreement.  
10

11           31. ImageWorks sent Messrs. Theney and Otiko a draft agreement that stated,  
12 among other things, “**WHEREAS**, Producer wishes to appoint IEI the sole and exclusive  
13 sales agent of the Picture in the Territory as herein defined”.  
14

15           32. The draft agreement sent by ImageWorks *left blank* who the party  
16 negotiating with ImageWorks was, but defined the party entering into the agreement as  
17 the “Producer”, i.e., the relevant portion of the word document appeared as follows:  
18

19           This Distribution Agreement (“Agreement”) is effective as of October  
20 28, 2014 (the “Effective Date”) between Imageworks Entertainment  
21 International, Inc., with an address at 6140 Variel Avenue, Woodland  
22 Hills, Warner Center, CA 91367 (“IEI”) and [\_\_\_\_\_] with an  
23 address at [address]. (“Producer”).  
24

25           33. The draft agreement further specified that the “Producer” “owns all right,  
26 title and interest, including copyright in and to, the motion picture currently entitled  
27 ‘Axeman 2’ (the ‘Picture’).”  
28

          34. Without Mr. Theney’s knowledge or approval, and prior to the completion  
of the Work at issue in this suit, on October 30, 2014, Defendants Otiko and BRF

1 executed the agreement with ImageWorks by claiming that BRF was the “Producer” and  
2 falsely claiming that BRF owns all right, title, and interest, including copyright in and to,  
3 the Work at issue.  
4

5 35. Otiko signed this contract with ImageWorks as the authorized signatory for  
6 BRF.  
7

8 36. The contract between Defendants is attached hereto as Exhibit B.

9 37. Defendant Otiko represented and warranted in Exhibit B at p. 3, ¶ 15 that  
10 “(a) Producer has full right, power, legal capacity and authority to enter into and carry out  
11 the terms of this Agreement and Producer has no knowledge of any of its obligation (sic)  
12 that will interfere with its carrying out of such terms of this Agreement and grant the  
13 rights granted herein, and that there has been no prior sale or transfer of rights to the  
14 Picture or any party thereof; (b) the Picture is Producer’s original work and does not now  
15 and will not violate any existing intellectual property rights, including, without limitation,  
16 copyright, trademark or any other proprietary or contractual rights, and that the Picture  
17 contains no matter which if published, will be harassing, libelous, obscene, or a violation  
18 of any rights of publicity or privacy, or any law regulation.”  
19  
20  
21

22 38. Defendants BRF’s and Otiko’s representations to Defendant ImageWorks  
23 were false, as BRF and/or Otiko did not own the copyright to the Work at issue and Otiko  
24 clearly knew that Mr. Theney owned all rights to the Work.  
25

26 39. Prior to reviewing an executed copy of Exhibit B (wherein BRF falsely  
27 claimed ownership of the copyright to the Work), Mr. Theney delivered the original (and  
28



1 his only copy of) the high resolution version of the Work to Defendant ImageWorks,  
2 believing that ImageWorks had entered into a “Sales Agency” agreement that allowed  
3 him to approve any deals that ImageWorks entered into.  
4

5 40. As part of its agreement with BRF, ImageWorks requested chain of title  
6 documents showing that BRF owned the copyright to the Work.  
7

8 41. Mr. Theney then communicated to ImageWorks that he owned the  
9 copyright, not BRF.

10 42. In response, ImageWorks sent the executed agreement (Exhibit B) to Mr.  
11 Theney, which Mr. Theney had never reviewed before.  
12

13 43. After his review of the executed agreement, Mr. Theney learned for the first  
14 time that BRF claimed it owned the copyright to the Work.  
15

16 44. Mr. Theney then notified ImageWorks and Otiko that he was the lawful  
17 owner of the copyright to the Work.

18 45. Thereafter, he and Defendant Otiko entered into Exhibit A, reaffirming his  
19 rights in the Work and Otiko’s role.  
20

21 46. Although Defendant Otiko did not have any rights to the copyrighted work,  
22 just *seven (7) days after* affirming Mr. Theney’s rights, Defendant Otiko fraudulently  
23 applied for and obtained U.S. Copyright Reg. No. PAu003818121 to Mr. Theney’s work.  
24

25 47. Defendant Otiko fraudulently listed himself as one of the authors of the  
26 Work.  
27  
28



49. On May 11, 2017, Mr. Theney wrote Defendant Otiko and advised him that his registration of Axeman II: Overkill was contrary to their express, written agreement and therefore Mr. Theney was terminating Defendant Otiko's right to represent him and his Works (to the extent that any such rights remained).

51. Also, beginning on May 10, 2017 and finishing on May 11, 2017, Mr. Theney applied for a copyright registration for his motion picture **Axeman II: Overkill**. The pending registration for his motion picture is Case No. 1-5102099981.

**FIRST CAUSE OF ACTION**

53. Plaintiff incorporates herein by reference all of the above paragraphs of this Complaint.

55. Attached hereto as Exhibit C is U.S. Copyright Registration TXU 1963552 for the screenplay to Axeman II: Overkill. Plaintiff Theney also applied for a copyright registration to his motion picture Axeman II: Overkill, which registration is currently pending.

1           57. On information and belief, one or both of the Defendants have created  
2 copies of the Work, by, among other things, uploading a copy of the Work to servers for  
3 the website [www.vimeo.com](http://www.vimeo.com).

4           58. The above acts infringe Plaintiff's exclusive rights to the Work and  
5 constitute copyright infringement of Mr. Theney's copyrights to the screenplay and the  
6 motion picture.

7           59. Plaintiff has repeatedly demanded that the Defendants return the high  
8 resolution copy of his motion picture to him, so that he can market it, but Defendants  
9 have refused.

10          60. The Defendants have willfully infringed Plaintiff's rights, and Plaintiff is  
11 without a remedy at law because Defendants have Plaintiff's only high resolution copy of  
12 his Work.

13               WHEREFORE, Plaintiffs request that the Court grant Plaintiff relief in the  
14 form of a Temporary Restraining Order, a Preliminary Injunction, and a Permanent  
15 Injunction barring Defendants from infringing Plaintiffs' rights any further, and  
16 granting Plaintiff damages as provided in 17 USC § 504, including statutory  
17 damages for willful infringement against each Defendant, or the Defendants'  
18 profits and Plaintiff's actual damages, whichever is greater.

19                       **SECOND CAUSE OF ACTION**

20                       **Declaratory Judgement (All Defendants)**

21          61. Plaintiff incorporates herein by reference all of the above paragraphs in this  
22 Complaint.

23          62. As Defendant Otiko has obtained a U.S. Copyright Registration for the  
24 Work, wherein Otiko falsely claimed that he was a co-author with Plaintiff, and because  
25 Otiko signed an agreement with Defendant ImageWorks wherein Otiko falsely claimed  
26 that BRF owns the copyright to the Work, an actual, justiciable controversy exists as to  
27 the ownership of the Work and the right to promote, market, license and distribute the  
28 Work.

63. Defendant ImageWorks lists on its website as part of its “film library” ([http://www.imageworksent.com/Films/FilmLibrary.asp?txtQuickSearch\\_FilmTitle=%7B9BEB3529-D7A8-E411-8748-D4AE527C3B65%7D](http://www.imageworksent.com/Films/FilmLibrary.asp?txtQuickSearch_FilmTitle=%7B9BEB3529-D7A8-E411-8748-D4AE527C3B65%7D) (last visited June 15, 2017)) the Work, but Defendant ImageWorks has no rights to the Work.

64. Defendants did not contribute to the Work in any way, and there is no written “Work for Hire” agreement that would possibly convey all or part of Mr. Theney’s rights in the Work to the Defendants.

65. There is no written assignment of the copyright to BRF or Otiko that was signed by Mr. Theney.

66. There is no written agreement between Defendant ImageWorks and Plaintiff, and Defendant Otiko exceeded his right in entering into the agreement attached hereto as Exhibit B, which Defendant ImageWorks was made aware of in a timely manner.

67. Despite learning that Defendant Otiko exceeded the scope of his agency by entering into Exhibit B, Defendant ImageWorks nevertheless accepted as true Otiko’s registration and has ignored Plaintiff’s demands for the return of his motion picture.

68. Defendants continue to hold Plaintiff hostage by refusing to return his film, and ImageWorks and Otiko have demanded that Plaintiff compensate them for their alleged investments before releasing his film, and have ignored Plaintiff’s demand for payment of his damages incurred due to the delays in marketing the film because of Otiko’s false claim of copyright ownership, and Otiko’s further false representation that BRF owns all copyright to the Work.

69. Further, Otiko falsely told the United States Copyright Office that he and Mr. Theney had joint ownership interests in the Work, and falsely represented that his authorship in the Work was the “entire motion picture, script/screenplay”.

WHEREFORE, Plaintiff requests this Court to enter Judgment in Plaintiff’s favor, and further, enter a Temporary Restraining Order and a Preliminary Injunction holding that Plaintiff owns all right, title and interest in the Work, and

1 that Defendants have no rights, title or interest in the Work, including any rights  
2 to distribute or promote the Work.

3 **THIRD CAUSE OF ACTION**

4 **REPLEVIN AND/OR ACTION OF CLAIM AND DELIVERY**

5 **(against ImageWorks)**

6 70. Plaintiff incorporates herein by reference all of the above paragraphs in this  
7 Complaint.

8 71. ImageWorks has possession of the Plaintiff's only high resolution copy of  
9 the Work, but has refused to return it to the Plaintiff unless Plaintiff reimburses  
10 ImageWorks for costs it allegedly expended in creating art work for the Work and  
11 promoting the Work pursuant to its agreement with BRF.

12 72. Plaintiff has repeatedly explained to ImageWorks that its remedy is against  
13 Otiko and BRF, not the Plaintiff.

14 73. Despite having a remedy against Otiko and BRF, ImageWorks continues to  
15 demand payment from Plaintiff and refuses to return the Work to Mr. Theney.

16 74. Pursuant to Code Civ. Proc., § 512.010, Plaintiff may apply for a writ of  
17 possession when he provides an application under oath that shows the basis of his claim,  
18 that Plaintiff is entitled to possession of the property, that the property is being  
19 wrongfully detained by the Defendant, an explanation of how Defendant came to possess  
20 the property, the reason for the detention of the property, a description of the property, a  
21 statement of its value, a statement of the location of the property, and a statement that the  
22 property has not been taken for a tax, assessment, or fine, or seized under an execution  
23 against the property of the plaintiff.

24 75. A description of the property is the fully functioning hard drive that contains  
25 a high resolution version of the Work. Mr. Theney gave this fully functioning hard drive  
26 to ImageWorks.

27 76. The value of the Work is, on information and belief, at least \$100,000.00.  
28

1           77. The location of the Work is, on information and belief, at the office of  
2 Defendant ImageWorks, 6140 Variel Avenue, Woodland Hills, CA 91367.

3           78. Plaintiff avers that his hard drive at issue has not been taken for a tax,  
4 assessment, or fine, or seized under an execution against the property of the Plaintiff.

5           79. All of the elements of Code Civ. Proc., § 512.010 are met by this Complaint,  
6 therefore, upon filing of an affidavit reaffirming the above, Plaintiff has met all elements  
7 of the statute.

8           WHEREFORE, Plaintiff requests this Court to enter Judgment in Plaintiff's favor,  
9 and order ImageWorks to return Plaintiff's hard drive with his high resolution copy  
10 of the Work to Plaintiff forthwith.

#### 11                           **FOURTH CAUSE OF ACTION**

#### 12                           **FRAUD (against Defendants BRF and Otiko)**

13           80. Plaintiff incorporates herein by reference all of the above paragraphs in this  
14 Complaint.

15           81. Defendant BRF, the d/b/a/ for Coast to Coast Podiatry, Inc., fraudulently  
16 represented to Defendant ImageWorks that it owned all rights, including the copyright, to  
17 the Work, when it entered into the contract attached hereto as Exhibit B.

18           82. Defendant Otiko fraudulently represented to the U.S. Copyright Office that  
19 he was a co-author of the script/screenplay and the motion picture **Axeman II: Overkill**.

20           83. Otiko concealed from Plaintiff the fact that he applied for a U.S. Copyright  
21 Registration for the Work, and that he had represented to the U.S. Copyright Office that  
22 he was a co-author of the Work.

23           84. Otiko further concealed from Plaintiff the fact that he signed Exhibit B on  
24 behalf of Coast to Coast Podiatry Inc.'s wholly owned and controlled entity, BRF, and  
25 that he represented and warranted to Defendant ImageWorks that BRF owned all right,  
26 title and interest in the Work.

27           85. Otiko knew he was not an author of the screenplay/script and motion picture  
28 **Axeman II: Overkill**.

1 86. Otiko intended to defraud Plaintiff and did defraud Plaintiff.

2 87. Plaintiff's reliance in Otiko was justifiable, since Otiko and/or Coast to  
3 Coast Podiatry, Inc. had paid for the expenses in making the Work.

4 88. Plaintiff has been damaged by Otiko's and Coast to Coast Podiatry, Inc.'s  
5 fraud and fraudulent concealment.

6 WHEREFORE, Plaintiff requests this Court to enter Judgment in Plaintiff's favor,  
7 and award him damages and punitive damages to deter Otiko, Coast to Coast  
8 Podiatry Inc., and others similarly situated from engaging in such fraudulent  
9 actions.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for a judgment:

12 A. Ordering that Plaintiff is the sole author of the script and Motion  
13 Picture **Axeman II: Overkill** and clearing title to Plaintiff's Work;

14 B. Holding that Defendants infringed Plaintiff's copyright;

15 C. Holding that the Defendants' infringement was willful;

16 D. Ordering an accounting of Defendants' profits;

17 E. Awarding Plaintiff damages, the greater of statutory damages, or the  
18 Plaintiff's losses and the Defendants' profits;

19 F. Ordering Defendant ImageWorks to return the hard drive and the high  
20 resolution copy of the Motion Picture Axeman II: Overkill to Plaintiff forthwith;

21 G. Awarding punitive damages against Defendants Otiko and Coast to  
22 Coast Podiatry, Inc.

23 H. Entering an injunction barring Defendants from claiming any rights to  
24 the Work, ordering Defendants to return all copies of the work to Plaintiff  
25 forthwith, and ordering Defendants to destroy all electronic copies of the Work  
26 forthwith.

27 //

28 //

1 I. Providing such further relief as the Court may deem fair and  
2 reasonable.

3  
4 Dated June 17, 2017

5 Respectfully submitted,

6 By: /s/ Francis "Casey" J. Flynn

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13 *Attorney for Plaintiff*  
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